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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,420

03/16/2006

Barry W Townsend

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

07/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/551,420	Applicant(s) TOWNSEND ET AL.	
	Examiner Alvin J. Stewart	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5, 6, 8-19, 21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,8-12,14-19,21 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

In claims 1, 14 and 25, there is lack of antecedent basis in the specification with respect to the word monolithically. The Applicant needs to add the newly claimed language in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 6, 8-12, 14, 21 and 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2626463A1.

'463 discloses a prosthetic foot having a hindfoot portion having a posterior plantar surface and a forefoot portion having an anterior (28) plantar surface weight bearing area and an upwardly arched midportion (1) monolithically formed with the forefoot and the hindfoot portions.

A posterior end of the upwardly arched midfoot portion is monolithically formed with a single coli extending downwardly with a posterior facing convexly curved surface from the

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upwardly arched midfoot portion and extending anteriorly with a downward facing convexly curved surface which terminates in a free end (6).

Regarding claim 5, see element 3.

Regarding claim 9, the device is capable of been adjustable.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pitkin US Patent 5,376,139.

Pitkin discloses a prosthetic foot having a posterior and anterior plantar surfaces weight bearing areas and a non-weight bearing arch shaped midportion extending between the weight bearing areas, wherein the midportion is formed with a coiled spring which is compressed to absorb and expanded to return vertical load during use of the foot keel in a prosthetic foot.

Additionally, the prosthetic foot further comprising a resilient, upstanding calf shank having a downward anteriorly facing convexly curved lower end coupled to the foot keel to form an ankle joint area of the prosthetic foot (see Figure 1 disclosing element 6).

The curved lower end is coupled to the foot keel by elements 7 and 2.

Regarding claims 17 and 18, elements 4 and 5 are capable of being removed in order to adjust to a new angle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2626463A1 in view of Atkinson et al US 2002/0087216A1.

'463 discloses the invention substantially as claimed. However, '463 does not disclose a resilient, upstanding calf shank having a downward, anteriorly facing convexly curved lower end coupled to the foot keel to form an ankle.

Atkinson et al teaches an artificial foot and ankle, wherein the implant discloses a resilient, upstanding calf shank having a downward, anteriorly facing convexly curved lower end coupled to the foot keel to form an ankle for the purpose of being able to connect with an artificial foot and being able to absorb forces exerted to the foot during the patient's normal gait.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the '463 reference with the ankle of the Atkinson et al reference in order to connect with an artificial foot and being able to absorb forces exerted to the foot during the patient's normal gait.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin J Stewart/
Primary Examiner, Art Unit 3774

June 23, 2008.